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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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24325	7590	01/04/2006	EXAMINER	
STEPHEN D. SCANLON			ERB, NATHAN	
JONES DAY			ART UNIT	
901 LAKESIDE AVENUE			PAPER NUMBER	
CLEVELAND, OH 44114			3639	

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/073,684

Applicant(s)

VULGAMORE ET AL.

Examiner

Nathan Erb

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 4, 10, 11, and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Priority***

1. It is noted that this application appears to claim subject matter disclosed in prior Application No. 60/353,318, filed 2-1-2002. A reference to the prior application must be inserted as the first sentence(s) of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e), 120, 121, or 365(c). See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, 121, or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an

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unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

The reference to the provisional application in the first line of the specification is missing the provisional application number. Please amend the specification to correct this omission.

### ***Specification***

2. The disclosure is objected to because of the following informalities:
  - a. On p. 3, line 11, please replace “or” with --of--.
  - b. On p. 4, line 14, please replace the second “20” with --28--.

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- c. On p. 4, line 15, please replace “conduct” with --conductor--.

Appropriate correction is required.

***Claim Objections***

3. Claim 4 is objected to because of the following informalities: Please replace the phrase “less than number” with --less than the number--. Appropriate correction is required.

4. Claim 10 is objected to because of the following informalities: Please replace “conductor” with --director-- on line 22. Appropriate correction is required.

5. Claim 11 is objected to because of the following informalities: Please replace “conductor” with --director-- on line 3. Appropriate correction is required.

6. Claim 18 is objected to because of the following informalities:

- a. Please replace “the” with --a-- on line 3.  
b. Please replace “conductor” with --director-- on lines 3, 8, and 11.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claimed subject matter which is not enabled is the music director/conductor, the executive administrative member, and

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the guest conductor formulating musical programs. The specification is not enabling because it does not explain how the above three individuals actually create musical programs, for example, what programs would be generated in particular situations. A person of ordinary skill in the art would require undue experimentation in order to practice this invention because his or her tripartite group would have to figure out for themselves what program decisions to make when working together. Some direction or guidance is provided in the specification for such decisions in the form of factors to be considered and using a systematic forecasting method to aid programming decisions. However, the specification still stops short of actually describing what decisions should result, which is needed to generate the programs, an important element of the claims. Thus, a person of ordinary skill in the art would require undue experimentation to make and use the claimed invention.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 recites the limitation "the music conductor" in line 22. There is insufficient antecedent basis for this limitation in the claim. Note that making the correction suggested in section 4 above would correct this problem.

11. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 13, the word "means" is preceded by the word(s) "personnel" in an attempt to use a "means" clause to recite a claim element as a means for performing a

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specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

12. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 18 recites the limitation "the music conductor" in line 3. There is insufficient antecedent basis for this limitation in the claim. Note that making the correction suggested in section 6a above would correct this problem.

13. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 19 recites the limitation "said music director" in line 16. There is insufficient antecedent basis for this limitation in the claim. Note that making the corrections suggested in section 6b above would correct this problem.

#### ***Claim Rejections - 35 USC § 101***

14. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

15. Claims 1-17 are rejected under 35 U.S.C. 101 because the limitations include a recitation of "a music director/conductor," "an executive administrative member," and "a guest conductor." Claim 13 also includes "additional personnel means." Examiner submits that when considering these limitations in the broadest reasonable interpretation, the limitations are interpreted as claiming a human being which is non-statutory. If the broadest reasonable interpretation of the claimed invention as a whole encompasses a human being, then a rejection under 35 U.S.C. 101

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must be made indicating that the claimed invention is directed to non-statutory subject matter.

See MPEP 2105.

16. Claims 18-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In order to be patentable, an invention involving an abstract idea must produce a useful, concrete, and tangible result. State Street Bank & Trust Co. v. Signature Financial Group Inc., 47 USPQ2d 1596, 1600-1601 (Fed. Cir. 1998). The inventions of these claims do not produce concrete results. A result is considered concrete if it is substantially repeatable or substantially predictable upon being repeated. The results of these inventions, the programs, are generated through the efforts of the human beings described in the steps of the methods of the claims. There is no reason to believe that the methods will produce repeatable, predictable results, that is, that substantially the same programs would be produced if any of the claimed methods were repeated. Human decisions are affected by a wide variety of factors, both internal and external, and can be very difficult to predict in complex matters. Therefore, these claims do not produce concrete results and are not patentable.

***Claim Rejections - 35 USC § 102***

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

18. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Sabulis, Tom, "The Atlanta Arts Scene: The 10 Biggest Stories of the Century Year," The Atlanta Journal the Atlanta Constitution, Home Edition, Atlanta, GA, December 10, 2000, p. L.1.



As per **Claim 1**, Sabulis discloses a system for generating musical programs for an orchestra organization, comprising:

- a music director who in the orchestra organization has responsibility for musical programming throughout substantially an entire musical season of the orchestra organization (p. 2, section 2, paragraph 1, “new music director”);

- an executive administrative member who performs an administration function within the orchestra organization (p. 2, section 2, paragraph 1, “ASO President Allison Vulgamore”);

and

- a guest conductor who is invited by the orchestra organization to conduct at least one musical program for the orchestra (p. 2, section 2, paragraph 1, “principal guest conductor”),

- said music director and said executive administrative member and said guest conductor together formulating at least one musical program for the orchestra (p. 2, section 2, paragraph 1, “With ASO President Allison Vulgamore, “Spannicles” will co-program the coming seasons”).

As per **Claim 5**, Sabulis discloses wherein the executive administrative member is president of the orchestra organization (p. 2, section 2, paragraph 1, “ASO President Allison Vulgamore”).

### ***Claim Rejections - 35 USC § 103***

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 2, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sabulis in view of Elliott, Susan, "The Atlanta Symphony Gets a Jolt of Energy," New York Times, Late Edition (East Coast), New York, NY, December 16, 2001, p. 2.1.

As per **Claim 2**, Sabulis fails to disclose wherein the musical programs include classical musical programs. Elliott discloses working to generate a classical musical program (p. 2, "Several well-worn classical performers are put forward"). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use the system described by Sabulis to generate classical musical programs as described by Elliott. Elliott implicitly provides motivation because generating classical musical programs allows the planners to put on classical musical shows.

As per **Claim 13**, Sabulis fails to disclose additional personnel that are used by at least one member of the tripartite group to assist in formulating the musical programs for substantially an entire musical season of the orchestra organization. Elliott discloses using additional personnel to assist in formulating musical programs (p. 4, 7th paragraph, "The proof lies not only in the War Room process but also in the origins of some of the repertory for the current season, which was put together last year, when Mr. Spano was music director-designate. Mr. Spano solicited suggestions from orchestra, chorus and staff members at all levels, and even from trustees"). The language of Elliott suggests that this is an ongoing philosophy (p. 4, 4th

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paragraph, “organization’s commitment to keeping lines of communication open”); therefore, Elliott implicitly discloses using the input from additional personnel in programming for substantially an entire musical season. It would have been obvious to one of ordinary skill in the art at the time of applicant’s invention to use the system described by Sabulis with music programming input from additional personnel as described by Elliott. Elliott provides motivation by describing how using such input from additional personnel encourages consensus and communication in the orchestra organization (p. 4, paragraphs 4-6).

As per **Claim 14**, Sabulis further discloses the tripartite group balancing business needs (p. 2, section 2, “try to grow the ASO’s stubbornly stagnant audience numbers”). Sabulis indicates the group is a multi-season partnership -- hence, Sabulis implicitly discloses that the tripartite group will be performing its functions for substantially entire musical seasons. However, Sabulis fails to disclose wherein the tripartite group balances organizational and audience input with artistic vitality. Elliott discloses the tripartite group balancing organizational input (p. 4, 7th paragraph, “The proof lies not only in the War Room process but also in the origins of some of the repertory for the current season, which was put together last year, when Mr. Spano was music director-designate. Mr. Spano solicited suggestions from orchestra, chorus and staff members at all levels, and even from trustees”) and audience input (p. 4, 6th paragraph, “who will listen to all the groups: the board, the players, the community, the chorus”) with artistic vitality (p. 3, 6th paragraph, “Explore the notion of creative curiosity in programming”). It would have been obvious to one of ordinary skill in the art at the time of applicant’s invention to use the system described by Sabulis while balancing the factors suggested by Elliott. Elliott

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provides motivation by suggesting that balancing such factors are part of a strategy to increase an orchestra's audience (p. 3, paragraph 2, "How do you get this credible, viable artistic institution to mean something to the community in which it lives? Because if it doesn't it's going to die").

21. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sabulis in view of Longino, Miriam Pace, "Country: Wynonna Celebrates at Chastain Tonight," The Atlanta Journal the Atlanta Constitution, Home Edition, Atlanta, GA, June 15, 2001, p. P.4. Sabulis fails to disclose wherein the musical programs include non-classical musical programs. Longino discloses non-classical musical programs (p. 2, 1st full paragraph, "The red-haired mother of two [referring to country singer Wynonna] has taken a bit of a break since a Judds mini-reunion tour in 2000. But she says tonight's Chastain Park Amphitheatre date -- the season opener for the Atlanta Symphony Orchestra's pops series -- was too tempting to pass up"). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use the system described by Sabulis to generate the non-classical program described by Longino. Longino provides motivation by implicitly suggesting that generating a non-classical musical program allows one to present a non-classical musical program for the entertainment of its audience.

22. Claims 4, 6, 7, 8, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sabulis in view of Brock, Wendell, "It's a New Era for Atlanta Symphony Orchestra," Times - Picayune, First Edition, New Orleans, LA, February 20, 2000, p. B.8.

As per **Claim 4**, Sabulis fails to disclose wherein the music director conducts for less than number of weeks in the musical season of the orchestra. Brock discloses a music director conducting for less than the number of weeks in the musical season of an orchestra (p. 2, 9th paragraph, “The duo’s first full year will be the 2001-2002 season, during which Spano will conduct 14 weeks of concerts and Runnicles six. By comparison, Levi held an 18-week contract”). It is a reasonable interpretation of Brock that the 2001-2002 season is more than 14 weeks and that at least one of Runnicles’ weeks will be without sharing conducting duties with Spano. It would have been obvious to one of ordinary skill in the art at the time of applicant’s invention to use the system described by Sabulis wherein the music director conducts for less than the number of weeks in the musical season of the orchestra as described by Brock. Brock provides motivation by implicitly suggesting that a conductor sharing conducting duties with another conductor can be part of a beneficial collaborative partnership (p. 1, last paragraph, “Though Spano and Runnicles have met only once -- at a hastily arranged Hartsfield International Airport interlude in December -- they are charged with sharing ideas in a culture that has long been the domain of autocratic, baton-wielding maestros. They will program concerts together. Both will play visible roles in education and community-outreach efforts. And since both are seasoned pianists, they are certain to appear onstage in chamber music concerts”).

As per **Claim 6**, Sabulis fails to disclose wherein the executive administrative member is responsible for assessing effect of activities within the orchestra organization upon budgetary limitations of the orchestra. Brock discloses an executive administrative member who is

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responsible for assessing effect of activities within the orchestra organization upon budgetary limitations of the orchestra (p. 3, 6th full paragraph, "With the new team, Vulgamore emerges with more power and an eye on the institution's artistic as well as fiscal well-being"). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use the system described by Sabulis with the executive administrative member keeping track of budgetary limitations as described by Brock. For motivation, official notice is taken of the fact that it makes financial sense for an organization not to overspend.

As per **Claim 7**, Sabulis further discloses wherein the executive administrative member is responsible for assessing the effect of activities within the orchestra organization upon the community (p. 2, section 2, "With ASO President Allison Vulgamore, "Spannicles" will co-program the coming seasons and, more importantly, try to grow the ASO's stubbornly stagnant audience numbers through outreach and education").

As per **Claim 8**, Sabulis fails to disclose wherein the guest conductor is a principal guest conductor who conducts at least three programs for the orchestra during a season. Brock implicitly discloses wherein the guest conductor is a principal guest conductor who conducts at least three programs for the orchestra during a season (p. 1, 3rd from bottom paragraph, "Runnicles, who has been named ASO principal guest conductor;" p. 2, 9th paragraph, "The duo's first full year will be the 2001-2002 season, during which Spano will conduct 14 weeks of concerts and Runnicles six.") Since the article measured a conductor's commitment based on number of weeks, it is reasonable to assume each week represents at least one program. It would

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have been obvious to one of ordinary skill in the art at the time of applicant's invention to use the system described by Sabulis with the guest conductor being a principal guest conductor and conducting at least three programs during a season as disclosed by Brock. Brock provides motivation by implicitly suggesting that a conductor sharing conducting duties with another conductor can be part of a beneficial collaborative partnership (p. 1, last paragraph, "Though Spano and Runnicles have met only once -- at a hastily arranged Hartsfield International Airport interlude in December -- they are charged with sharing ideas in a culture that has long been the domain of autocratic, baton-wielding maestros. They will program concerts together. Both will play visible roles in education and community-outreach efforts. And since both are seasoned pianists, they are certain to appear onstage in chamber music concerts").

As per **Claim 18**, Sabulis discloses a music director/conductor, an executive administrative member, and a principal guest conductor who together formulate musical programs for substantially an entire musical season (p. 2, section 2, "The Atlanta Symphony Orchestra double-dipped into the national talent pool, emerging with a new music director and a principal guest conductor. Known for his contemporary edge and engaging style, conductor Robert Spano of the Brooklyn Philharmonic will serve as the orchestra's artistic leader. Donald Runnicles (left), music director of the San Francisco Opera, brings Wagnerian expertise and a prowess at marshaling busy choral productions. With ASO President Allison Vulgamore, "Spannicles" will co-program the coming seasons and, more importantly, try to grow the ASO's stubbornly stagnant audience numbers through outreach and education"). Sabulis further discloses (inherently) the limitation of "in a pre-selected musical genre." Naturally, the genre of

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a musical program must always be decided prior to generating the musical program. However, Sabulis does not disclose the music director/conductor and the principal guest conductor being under contract. Brock discloses the music director/conductor and the principal guest conductor being under contract (p. 1, 3rd from bottom paragraph, "Both have signed four-year contracts"). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use the method described by Sabulis with the music director/conductor and the principal guest conductor under contract as described in Brock. Brock provides motivation by implicitly suggesting that the contracts mean that the conductors have committed themselves to performing their duties for the contracted future seasons (p. 1, 3rd from bottom paragraph, "In an unusual collaborative partnership, Spano will share responsibilities with San Francisco Opera music director Donald Runnicles, who has been named ASO principal guest conductor. Both have signed four-year contracts").

As per **Claim 19**, Sabulis further discloses wherein said music director has responsibility for musical programming throughout substantially an entire musical season of the orchestra organization. He shares that responsibility with the other two programming team members as described by Sabulis in the analysis for claim 18 above. Sabulis further inherently discloses said executive administrative member performing an administration function within the orchestra organization. Of course an administrative member will perform administration functions; that is basically the definition of administrative. Sabulis fails to disclose the principal guest conductor being invited by the orchestra to conduct a plurality of musical programs for the orchestra and the generated musical programs being of the classical music genre. Brock discloses the principal



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guest conductor being invited by the orchestra to conduct a plurality of musical programs for the orchestra (p. 2, 9th paragraph, "The duo's first full year will be the 2001-2002 season, during which Spano will conduct 14 weeks of concerts and Runnicles six.") Since the article measured a conductor's commitment based on number of weeks, it is reasonable to assume each week represents at least one program. Brock also implicitly discloses the generated musical programs being of the classical music genre (p. 2, 2nd full paragraph from bottom, "He [the music director] is an ambassador for classical music in the way that Wynton Marsalis is for jazz or Michael Feinstein is for the American songbook"). It is reasonable to assume that with the music director being such a big name in classical music, at least some of the musical programs produced by the programming team are likely to be of the classical music genre. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use the method described in Sabulis with the principal guest conductor being invited by the orchestra to conduct a plurality of musical programs for the orchestra and with the generated musical programs being of the classical music genre, as disclosed by Brock. Brock provides motivation by implicitly suggesting that a conductor sharing conducting duties with another conductor can be part of a beneficial collaborative partnership (p. 1, last paragraph, "Though Spano and Runnicles have met only once -- at a hastily arranged Hartsfield International Airport interlude in December -- they are charged with sharing ideas in a culture that has long been the domain of autocratic, baton-wielding maestros. They will program concerts together. Both will play visible roles in education and community-outreach efforts. And since both are seasoned pianists, they are certain to appear onstage in chamber music concerts") and by implicitly incorporating that generating classical musical programs allows the planners to put on classical musical shows.

23. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sabulis in view of Brock as applied to claim 8 above, and further in view of Elliott.

As per **Claim 9**, Sabulis further discloses the music director, principal guest conductor, and executive administrative member formulating musical programs for substantially an entire musical season of the orchestra organization (p. 2, section 2, paragraph 1, “With ASO President Allison Vulgamore, “Spannicles” will co-program the coming seasons”). Neither Sabulis nor Brock disclose wherein the principal guest conductor mirrors the music director in cross constituency dialogue in formulating musical programs. However, Elliott does disclose wherein the principal guest conductor mirrors the music director in cross constituency dialogue in formulating musical programs (p. 4, 8th paragraph, “Another, more obvious, departure from the traditional orchestral model is the importance of the principal guest conductor, Donald Runnicles. As if to counterbalance any potential angst about Mr. Spano's maverick programming practices (which have so far had mostly to do with thematic programming and concert format, as in the use of video in performances), the Atlanta Symphony announced Mr. Runnicles's appointment as principal guest conductor at the same time that it announced Mr. Spano's as music director”). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the subject matter of Sabulis and Brock in claim 8 so that the principal guest conductor mirrors the music director in cross constituency dialogue in formulating musical programs as described by Elliott. Elliott provides the motivation in the

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immediately preceding quote: to counterbalance any concerns about the music director's programming decisions.

As per Claims 10 and 11, neither Sabulis nor Elliott disclose creating contracts with the music director/conductor and the principal guest conductor. However, Brock further discloses the music director/conductor and the principal guest conductor being under contract (p. 1, 3rd from bottom paragraph, "Both have signed four-year contracts"). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use the subject matter of claim 9 as described by Sabulis, Brock, and Elliott with the music director/conductor and the principal guest conductor under contract as described in Brock. Brock provides motivation by implicitly suggesting that the contracts mean that the conductors have committed themselves to performing their duties for the contracted future seasons (p. 1, 3rd from bottom paragraph, "In an unusual collaborative partnership, Spano will share responsibilities with San Francisco Opera music director Donald Runnicles, who has been named ASO principal guest conductor. Both have signed four-year contracts").

24. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sabulis in view of Brock in further view of Schwartz, Jerry, "ASO Breaks Mold to Become Audience-Sensitive Orchestra Improved Food Service, Dressed-Up Hall Planned," The Atlanta Journal the Atlanta Constitution, Atlanta, GA, September 13, 1998, p. L.12. Sabulis further discloses education programs (p. 2, section 2, "With ASO President Allison Vulgamore, "Spannicles" will co-program the coming seasons and, more importantly, try to grow the ASO's stubbornly stagnant

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audience numbers through outreach and education”). Sabulis fails to disclose guest conductors (other than the guest conductor that is a member of the three-person programming group), guest artists, chamber music forums, performance scheduling, choice of venues, and physical performance space. Brock implicitly discloses chamber music forums (p. 1, last paragraph, “And since both are seasoned pianists, they are certain to appear onstage in chamber music concerts”). If there are to be chamber music concerts, it follows that chamber music forums would need to be selected. It would have been obvious to one of ordinary skill at the time of applicant’s invention to use the system of Sabulis with chamber music forums selected as implicitly disclosed by Brock. Brock implicitly provides motivation in the immediately preceding quote because selecting chamber music forums allows one to present chamber music concerts. Neither Sabulis nor Brock disclose guest conductors (other than the conductor that is part of the programming group), guest artists, performance scheduling, choice of venues, and physical performance space. However, Schwartz discloses guest conductors (p. 2, 2nd full paragraph, “But guest conductors --- many of them new to Atlanta audiences --- will occupy the 12 remaining conducting slots in the 24-week season”), guest artists (p. 2, 4th paragraph from bottom, “There are more big-name guest artists in the coming season than in several seasons past”), performance scheduling (p. 1, second from last line, “Thursday. 8 p.m.,” it was necessary for someone to schedule this particular time for this performance), choice of venues (p. 1, last line, “Symphony Hall, 1280 Peachtree St. N.E.,” someone had to choose this venue for the performance), and physical performance space (see immediately preceding quote, someone had to choose that physical performance space). It would have been obvious to one of ordinary skill in the art at the time of applicant’s invention to add these limitations to the subject matter

disclosed by Sabulis and modified by Brock as described above in this section. Schwartz implicitly provides the motivation for providing each of the limitations it suggests. Specifically, guest conductors and artists can add to the entertainment value of performances while performance scheduling, choosing venues, and choosing physical performance spaces set out a time and place for a performance to actually occur.

25. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sabulis in view of Phillips et al., U.S. Patent Application Publication No. US 2002/0120492 A1.

As per **Claim 15**, Sabulis fails to disclose the database of historical musical programming-related data and the forecasting model analysis module. Phillips et al. discloses a database that stores historical event data (paragraph [0038], “Historical data may be obtained from the event history database 202. It is preferable that records of historical events that are similar to events at issue are considered when forecasting demand for the event”) and a forecasting model analysis module connected to the database to generate at least one audience buying indicative statistic based upon the stored historical data and upon a candidate event (paragraphs [0039]-[0040]). Phillips et al. further discloses using the outputs to make changes to optimize revenue (paragraph [0042], “Based on outputs from the forecast module 203, an optimization module 206 may recommend actions to be taken to optimize revenue”). Phillips et al. further discloses that its invention may be used with respect to concert events (paragraph [0032], “Based on the descriptions, those skilled in the art will appreciate that the present invention may be used in many different areas, including pricing of hotel rooms, airline seats, cruise tickets, tour tickets, and concert tickets. As such, the present invention is not limited to a

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specific application area”). The word “concert” typically suggests a musical performance event. It would have been obvious to one of ordinary skill in the art at the time of applicant’s invention to use the invention suggested by Phillips et al. to assist the programming team of Sabulis in making their decisions. Phillips et al. provides motivation (paragraph [0003], “The present invention relates to an event revenue management system for forecasting demand for an event and optimizing ticket pricing and allocation based on historical and current data to manage revenue and to maximize profit from the event”).

As per **Claim 16**, Sabulis further discloses the programming team formulating substantially all of the musical programs for a musical season of the orchestra (p. 2, section 2, “With ASO President Allison Vulgamore, “Spannicles” will co-program the coming seasons and, more importantly, try to grow the ASO’s stubbornly stagnant audience numbers through outreach and education”).

As per **Claim 17**, Sabulis fails to disclose wherein the forecasting model analysis module predicts sales volumes. Phillips et al. discloses wherein the forecasting model analysis module predicts sales volumes (paragraph [0040], “The forecast module 203 may be used to forecast future bookings, future cancellations, and unconstrained demand. Future bookings and future cancellations may be defined as the number of ticket sale transactions prior to an event and the number of ticket return transactions prior to an event, respectively. Unconstrained demand may be defined as the net number of tickets (i.e., the number of bookings less the number of cancellations) that would be sold in each resource with no inventory availability or sales

restrictions in place”). It would have been obvious to one of ordinary skill in the art at the time of applicant’s invention to use the subject matter of Sabulis and Phillips et al. as claimed in claim 16 wherein the forecasting model analysis module predicts sales volumes as described by Phillips et al. Phillips et al. provides motivation (paragraph [0003], “The present invention relates to an event revenue management system for forecasting demand for an event and optimizing ticket pricing and allocation based on historical and current data to manage revenue and to maximize profit from the event”).

26. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sabulis in view of Brock as applied to claim 18 above, and further in view of Phillips et al. Neither Sabulis nor Brock disclose generating at least one audience buying indicative statistic based upon historical musical programming-related data and upon the candidate musical program and then using the generated audience buying indicative statistic to assist in modifying at least one of the candidate musical programs. Phillips et al. discloses a database that stores historical event data (paragraph [0038], “Historical data may be obtained from the event history database 202. It is preferable that records of historical events that are similar to events at issue are considered when forecasting demand for the event”) and a forecasting model analysis module connected to the database to generate at least one audience buying indicative statistic based upon the stored historical data and upon a candidate event (paragraphs [0039]-[0040]). Phillips et al. further discloses using the outputs to make changes to optimize revenue (paragraph [0042], “Based on outputs from the forecast module 203, an optimization module 206 may recommend actions to be taken to optimize revenue”). Phillips et al. further discloses that its invention may be used with respect to

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concert events (paragraph [0032], “Based on the descriptions, those skilled in the art will appreciate that the present invention may be used in many different areas, including pricing of hotel rooms, airline seats, cruise tickets, tour tickets, and concert tickets. As such, the present invention is not limited to a specific application area”). The word “concert” typically suggests a musical performance event. It would have been obvious to one of ordinary skill in the art at the time of applicant’s invention to use the method suggested by Phillips et al. to assist the programming team of Sabulis modified by Brock in making their decisions. Phillips et al. provides motivation (paragraph [0003], “The present invention relates to an event revenue management system for forecasting demand for an event and optimizing ticket pricing and allocation based on historical and current data to manage revenue and to maximize profit from the event”).

### ***Conclusion***

27. **Examiner’s Note:** Examiner has cited particular portions of the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Erb whose telephone number is (571) 272-7606. The examiner can normally be reached on Mondays through Fridays, 8:30 AM to 5 PM.



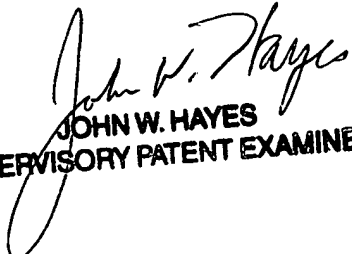
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nathan Erb  
Examiner  
Art Unit 3639

nhe

  
**JOHN W. HAYES**  
**SUPERVISORY PATENT EXAMINER**